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13 Attorneys for Defendants CURRENT
14 ENERGY LLC and KEVIN ADAMS

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 MIRYAM ABITBOL, individually
18 and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 v.

22 CURRENT ENERGY LLC
23 AND KEVIN ADAMS

24 Defendants.

25 Case No. 2:24-cv-08132-FLA-BFM

26 **DEFENDANTS' NOTICE OF
27 MOTION AND MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT PER FEDERAL
RULE OF CIVIL PROCEDURE
12(b)(6)**

Hearing

Date: January 31, 2025

Time: 1:30 PM

Courtroom: 6B

Hon Fernando L. Aenlle-Rocha

28 **Complaint Served: Sept 26, 2024**

Trial Date: None Set

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES,**
2 **AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on Friday, January 31st, 2025, at 1:30 p.m.

4 or as soon thereafter as the matter may be heard in courtroom 6B of the above
5 entitled court, located at 350 W 1st Street, 6th Floor, Los Angeles, California
6 90012, before the Honorable Fernando L. Aenlle-Rocha of the United States
7 District Court for the Central District of California, Defendants, Current Energy
8 LLC and Kevin Adams, will, and hereby do, move the Court to dismiss the claims
9 brought by Plaintiff, Miryam Abitbol, for failure to state a claim upon which relief
10 can be granted under Federal Rule of Civil Procedure 12(b)(6). This motion is
11 made on the grounds that:

12 Plaintiff alleges that on August 6th, 2024, she received two unsolicited
13 telemarketing calls made by Energy Efficient. Plaintiff alleges these calls came to
14 her California residential phone number used for personal purposes, not associated
15 with any business, and states that number has been listed on the National Do Not
16 Call Registry since June 1, 2011. Plaintiff claims that during the first call, she
17 requested not to be called again. Plaintiff alleges that after the request to cease
18 calling, someone placed a second call to her during which she was transferred to
19 Kevin Adams (“Adams”). Plaintiff alleges that, during this call, Adams held
20 himself out as an employee of Current Energy (“CE”) and further communicated
21 with her via text, again claiming to be an employee of CE. Plaintiff alleges these
22

1 calls violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, (“TCPA”)
2 and that CE and Adams are liable for these calls. Plaintiff does not allege that CE
3 or Adams directly made the calls. Plaintiff does not sufficiently allege or identify
4 any basis for concluding that the callers are agents of CE or Adams and, therefore,
5 Plaintiff has failed to state a claim upon which relief can be granted under Federal
6 Rule of Civil Procedure 12(b)(6).
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9 This motion is based on this notice, the accompanying Brief in Support, the
10 records and pleadings on file in this matter, and any other evidence that may be
11 presented to the Court at the time of the hearing.
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Local Rule 7.3 Compliance. This motion is made following the
14 conference of counsel pursuant to Central District Local Rule 7-3, which occurred
15 on October 25, 2024, during which counsel for the parties discussed the plaintiff’s
16 claims and issues raised herein. Counsel for the defendants, Mr. Fitzpatrick, sent
17 an email to Mr. Perrong dated November 7, 2024 inviting further discussion on the
18 topics addressed during the October 25, 2024 teleconference: “Have you given any
19 thought to my feedback re: Current Energy not directly placing the call? I would
20 rather not bother with motion practice on that issue if we can avoid it. Happy to
21 offer you a sworn statement to move the case in the direction it will ultimately
22 move anyway” to which counsel did not receive a response.
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1 Dated: December 24, 2024

Respectfully Submitted,

2 By: /s/ Michael A DiNardo

3 Michael A. DiNardo, Esq.

4 YK LAW LLP

5 John D Fitzpatrick, Esq. (PHV pending)
6 CUNNINGHAM DALMAN, P.C.

7 Attorneys for Defendants Current Energy,
8 LLC and Kevin Adams

9

10 **CERTIFICATE OF SERVICE**

11

12 I hereby certify that all counsel of record, who are deemed to have consented
13 to electronic service are being served with a copy of this document via the Court's
14 CM/ECF system. Any other counsel of record will be served by electronic mail,
facsimile transmission and/or first-class mail on this same date.

15 /s/ Michael A. DiNardo

16 Michael A. DiNardo